

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

SANITEC INDUSTRIES, INC.,)
)
Plaintiff,)
)
v.) Civil Action No. 04-1386-JJF
)
)
SANITEC WORLDWIDE, LTD.,)
)
Defendant.)

**PLAINTIFF'S REPLY MEMORANDUM
IN SUPPORT OF ITS
MOTION FOR VOLUNTARY DISMISSAL**

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March 22, 2006

ARGUMENT

For the reasons set forth in its memorandum in support and exhibits (D.I. 36-37), the motion to voluntarily dismiss this action filed by plaintiff, Sanitec Industries, Inc. ("Industries"), against defendant, Sanitec Worldwide, Ltd. ("Worldwide"), without prejudice, should be granted. The record is clear that two former defendants here, Jeffrey J. Weinsten ("Weinsten") and James H. Smith ("Smith"), have no ownership interest in Worldwide and have been enjoined from asserting any such interest. Based on the final decision by the California Superior Court and the record described in Industries' motion, James Harkess ("Harkess"), Industries' director, officer and shareholder, indirectly owns and controls Worldwide. Thus, there is no need to continue this action.

The answering brief (D.I. 38) filed by David L. Finger, purportedly on behalf of Worldwide, presents no reason to deny Industries' motion.¹

CONCLUSION

For all the foregoing reasons, Industries' motion to dismiss this action against Worldwide without prejudice should be granted.

March 22, 2006

THE BAYARD FIRM

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¹ Despite his termination as counsel for Worldwide, Mr. Finger continues to purportedly act on behalf of Worldwide. However, the answering brief makes clear that he is in reality acting for Weinsten, who continues to assert an interest in Worldwide.

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CERTIFICATE OF SERVICE

The undersigned counsel certifies that, on March 22, 2006, he electronically filed the foregoing document with the Clerk of the Court using CM/ECF, which will send automatic notification of the filing to the following:

David L. Finger, Esq.
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The undersigned further certifies that a copy of the foregoing was sent to the above counsel by hand on March 22, 2006.

/s/ Richard D. Kirk (#922)